
The International Prospects of the Soixante-Huitard

Deborah Whitehall*

Abstract

Revolution is not an international legal category. The golden jubilee of the global protests and rebellions identified with 1968 presents an opportunity to reconsider the usual formula from the angle of the protagonist of the French upheavals and its critic, Hannah Arendt. The soixante-huitard strikes a provocative figure for the humanist achievements and celebrations of the world community in 1968: its youthful songs, playfulness, dissatisfaction and anxiety for things to come tied it, temporally and symbolically, to the moving reel of protest across the post-industrial world and to the thematic heartbeat of international law in the first International Year of Human Rights. The catch is the imperfection of the connection. Arendt's writing about revolution and international law does not resolve the dissidence between the two phenomena or its reiteration by the United Nations in 1968. What Arendt does do, however, is to measure the success or failure of each against its mission to humanize the world. This article takes inspiration from Arendt to refigure the usual relation between international law and revolution as paired projects that do not yoke, but, rather, relate and separate, along a single, humanist seam.

1 Twin *Esprit de Corps*

International legal thought traditionally agrees with political theory to leave the processes and outcome of revolution alone. Hannah Arendt's mid-century political writings about revolution agree with the juridical views of her contemporaries, including Hans Kelsen, his student Hersch Lauterpacht, and Carl Schmitt, who decline any part for the law of nations in shaping parochial dreams for change. Each defer to the choices of citizens or peoples because revolution is a technique of statecraft from which new regimes and constitutional realities spring and reify in law. Despite its longevity and sense, this formulation does not account for the humanist impulse that conditioned law and protest across the post-industrial and still decolonizing world in 1968. The student rebel known as the *soixante-huitard* was the protagonist of the

* Lecturer in Law, University of Sydney, Australia. Email: deborah.whitehall@sydney.edu.au.

French upheavals associated with *Mai 1968* and remains the pin-up for a year of transnational protest that coincided, but never merged, with the projects of global law. Its example challenges the juridical presumption not by dissolving urban protest or revolution into a legal category but, rather, by making the sideward glance of internationalists less assured. Arendt's political thought, including her response to the student movements of 1968, offers suggestive clues by explaining how each phenomenon succeeds or fails according to its own measure, which, pared back to its central theme, is simply the shared longing to humanize the world. Her separate analyses about the disappointed ambitions of humanist law and humanist revolution elucidate in the figure of the *soixante-huitard*. A variation of its humanist chant echoes in the multiple missed encounters between the two phenomena in 1968 to become a tracing line between the seeming disaggregated projects and actors. To follow its beat through the juridical and civic dramas of 1968 notices paired projects that never yoke but, rather, move along a single humanist seam.

International histories of 1968 rarely begin with protest. Then, international lawyers and international organizations paid attention to the fantastic frontiers made proximate by new technologies (outer space, the deep ocean floor, nuclear proliferation, human mobility); the fallout from a decade of decolonization (succession, recognition, new sovereigns); the refinement of the mechanisms of regulation (treaty interpretation, diplomacy, tribunals, organizational life) and danger (war, intervention, rebellion and progress towards détente).¹ These agendas left a narrower margin for internationalists to wonder about the significance for them of local disruptions. Allegiance to the sovereign state prioritized the choices of peoples and allowed internationalists to witness urban upheaval without responsibility for what comes next. Nevertheless, what happened in the civic margin impressed itself on the collective imagination shared by diplomats, politicians, citizens and activists because it occurred alongside their daily lives in their countries, cities and neighbourhoods. Assassinations, of a statesman and a human rights activist, straddled the remarkable moment remembered as *Mai 1968* to create a clarifying sequence when questions of

¹ A brief glance at relevant United Nations (UN) records as well as the contents of volume 17 (1968) and volume 18 (1968) of the *International and Comparative Law Quarterly (ICLQ)* and volume 62 (1968) and volume 63 (1969) of the *American Journal of International Law (AJIL)*, identify a diverse range of topics attracting international legal attention in 1968 addressing 'frontiers' of multiple kinds. Specific examples include the legality of foreign interventions in Vietnam (USA) and Czechoslovakia (Soviet Union) and an emergent commitment to the protection of human rights and treaty making in previously unthought-of zones of influence; see also International Conference on Human Rights (Tehran, 22 April–13 May 1968) (Tehran Conference); Final Act of International Conference on Human Rights, Doc. A/Conf.32/41, 13 May 1968 (Final Act of the Tehran Conference); Proclamation of Tehran, in Final Act of the Tehran Conference, at 3–5 (Proclamation of Tehran); UN Conference on the Exploration and Peaceful uses of Outer Space (Vienna, 14–27 August 1968); Report of the Committee on the Peaceful Uses of Outer Space, Doc. GA A/7285, 23rd Session, 1968; Agreement on the Rescue of Astronauts, the Return of Astronauts and the Return of Objects Launched into Outer Space, GA Res. 2345 (XXII), 19 December 1967; UN Conference on the Law of Treaties (Vienna, 26 March–24 May 1968); Treaty on the Non-Proliferation of Nuclear Weapons, GA Res. 2373 (XXII), 12 June 1968; and the Protocol Relating to the Status of Refugees 1967, 606 UNTS 267.

states and rights and revolution were of contemporaneous and worldwide concern.² Mass protest movements spontaneously linked cities across the post-industrial world. Cold War distinctions changed the object of political resistance, though neither socialist nor liberal regimes were immune from the revolutionary and anti-authoritarian wish that referenced back to the felt injustices and optimisms of the human being. The protagonists of the Prague Spring asked for ‘socialism with a human face’; the anthems of American, Australian and British protest sought an end to foreign intervention in Vietnam, racial inequality at home or apartheid abroad and the *soixante-huitard* – the subject who anchors this study – resisted the conservative and exclusory frames of higher education in France.

The *soixante-huitard* epitomizes the French experience of protest and remains an important emblem for the inaugurating processes of its generation.³ The student rebel from the outskirts of Paris rioted in the streets around the Sorbonne between 3 and 10 May, before inspiring solidarity among millions of workers across France in a general strike on 13 May. These would-be revolutionaries quickly conceded their different aspirations to bourgeois reform though not before Charles de Gaulle fled to Germany on 29 May, leaving France momentarily without a leader. Although syn-copated and incomplete, the historical fragment identified with the *soixante-huitard* demonstrates, as the French sociologist and witness Henri Lefebvre observes, the new possibility where ‘each country has *conjuncturally* become a bearer (support) of the worldwide’ as an experimental site of new forms of interrogation and alliance.⁴ The *soixante-huitard* typified a haphazard pattern of progression when, according to writers like Lefebvre, ‘the worldwide and *mondialisation* present themselves as a becoming that is full of contradictions and highly unequal, with regressions, displacements, and leaps, from the market and production to so-called “cultural” creation’.⁵ Lefebvre’s assessment represents the standard view that memorializes 1968 as an extraordinary instant that failed to follow through.⁶ The assessment may explain popular nostalgia for the drama identified with *Mai 1968* but does not elucidate the subtleties of the connections between the *soixante-huitard* and other protesters nor the international juridical significance of protest. The link between the distinct phenomena and actors arises from noticing the humanist tones that define the performative gesture and the abstract prototype of rights. The multiple types of humanist expression demonstrate

² The student riots in Paris climaxed violently on ‘Bloody Monday’ (6 May 1968) after the assassination of Martin Luther King Jr in Memphis (4 April 1968) and before the fatal shooting of J.F. Kennedy’s brother and politician Robert Kennedy (4–5 June 1968). See, e.g., ‘1968: Timeline’, available at <https://cds.library.brown.edu/projects/1968/reference/timeline.html>.

³ For historical details of *Mai 1968* in France, see, e.g., Gilcher-Holtey, ‘France’, in M. Klimke and J. Scharloth (eds), *1968 in Europe: A History of Protest and Activism, 1956–1977* (2008) 111; Craiutu, ‘Thinking Politically: Raymond Aron and the Revolution of 1968 in France’, in V. Tismaneanu (ed.), *Promises of 1968: Crisis, Illusion, and Utopia* (2011) 103; G.-R. Horn, *The Spirit of ‘68: Rebellion in Western Europe and North America, 1956–1976* (2007), at 100–110; T. Judt, *Postwar: A History of Europe since 1945* (2005), at 413.

⁴ H. Lefebvre, ‘Revolutions’, in N. Brenner and S. Elden (eds), *State, Space, World: Selected Essays of Henri Lefebvre* (2009) 290, at 302 (emphasis added).

⁵ *Ibid.* (emphasis added).

⁶ W. Shannon, ‘The Year That Failed to Turn’, *New York Times* (30 December 1968), at 30.

the unexpected possibilities and questions for the new forms of the ‘worldwide’ or mondialization when the juridical idea meets its intended subject in context.

The *soixante-huitard* encounters international law as a proxy for its ideal of abstract life and as a substitute for the would-be revolutionaries who contemporaneously appeared abroad. *Mai 1968* yielded an unlikely understudy for either the normative category or the foreign protester not least because there was no cross-referencing between the events unfolding in the streets of Paris and the humanist mission of states nor explication of a networked situation of international regulatory concern. The lack of self-conscious collision or collusion between norms and social facts and the absence of any supranational network, however, is precisely the reason for theorizing the *soixante-huitard* as a critical subjectivity for international law. The snapshot of failed revolution in France elucidates the dualities that condition the development of international regulation and peak at brief critical junctures when the universal category seems to spring to life in multinational locations but recedes before actualizing revolutionary change. *Mai 1968* proves that the norm does not substantiate when the almost revolutionary – visceral in form but incomplete in tactics and theory – antagonizes the state and has no juridical ally among states with influence abroad. Though the sideways glance of international lawyers in revolutionary moments is usual, the habit hollows out the normative ideal of abstract life when there is a fleeting and extraordinary window to substantiate and progress that figure in law. The *soixante-huitard*'s disinterest in transcending its situation, by staking a claim on the international norm and participating in institutional dialogues organized around the juridical category, amplifies the ironies of stalled revolutions for international law. In 1968, in Paris and elsewhere, protesters became unknowing and inexperienced agents in the trajectory of international law by enacting a variation of its humanist ideal without entering, as subject or object, the relevant institutional fray.

This is where Arendt enters 1968 as a sceptic of human rights and as a theorist and witness of revolution. Her question to revolutionary politics about how to make the world more humane repeats as her, as well as a critical, question for international law in the twenty-first century. Her political theory does not compare the two modalities but distils a different variation of humanism to be the animating ethos that fetishizes international law and revolution and, as often happens with fetish, disappoints the zeal. Arendt enables new readings about the juridical significance of the *soixante-huitard* by problematizing it and the humanist seam from which it appeared. The standard narrative that separates international law and revolution undergoes revision when the student protester becomes noticeable as the humanist silhouette that traced multiple missed encounters between international law and revolution in 1968: first, these micro-histories bring international law and revolution into ethical alliance by making humanist protest the radical and transnational byline of universal ideals; second, the *soixante-huitard* characterizes the parallel trajectories of international law and revolution at certain culminating intervals when worldwide pressures create opportunities for the triumph of humanist ideals through new forms of collaboration that diplomats, global institutions and citizens equally fail to see or refuse and, third, the *soixante-huitard* typifies the frustrations of the international juridical subject

by disappearing into the generalized category of 'we the people', which leads back to the state and to reform.

The revisions for international legal thought inspired by the *soixante-huitard* begin in Part 2 with an explication of the standard separation of international law and revolution and its multiple expressions in 1968. Part 3 proposes a modification of the standard. The change follows from noticing the humanist thread that inspires both international law and revolution and that Arendt observes becomes the definitive disappointment of each to humanize the world in the twentieth century. Arendt's narrative of two humanisms prompts a refashioning of the juridical standard that emphasizes the parallel (not separate) lives of juridical and radical practice in 1968, each peaking, turning or receding in tandem around a humanist imperative in moments of worldwide concern. Part 4 situates this new narrative about the 'parallel lives' of international law and revolution in the context of diplomatic celebrations for the first International Year of Human Rights, which concurred in time, spirit and result with the revolutionary projects of the *soixante-huitard* but without attention to its provocations. Part 5 concludes with reflections on the logic of the internationalist's rule that separates law and revolution by suggesting that it, like the student protester, succeeds and falters by reference to 'we the people' and the epithet's traps.

2 International Law and Revolution

To suggest that revolution and international law travelled (or could travel) along a single conceptual seam resists juridical convention. When Marxists of multiple persuasions gathered between 8 and 10 May 1968 at the United Nations Educational, Scientific and Cultural Organization's (UNESCO) headquarters on Place de Fontenoy, for example, they commemorated the birth date of the feted theorist of revolution but made no allusions to the barricades and street fighting in the next arrondissement.⁷ Herbert Marcuse, the eminent German-American critical theorist, spoke at the international colloquium about the need to re-examine the meaning of revolution after Marx. Marcuse identified revolution as a historical practice that may, as all processes can, eclipse existing theoretical reflection. He proposed the re-evaluation of the idea of Marxist revolution because subversive activity 'has become a *global* one ... as element and chance and choice in the international constellation'.⁸ Marcuse did not mention the irony of hosting the UNESCO symposium at the historical site of the French Revolution about a pivotal theorist of modern revolution nor the absence of commentary by attendees on the events unfolding outside. However, Marcuse did address student demonstrators in numerous impromptu lectures outside the UNESCO headquarters to

⁷ United Nations Educational, Scientific and Cultural Organization (UNESCO) Symposium, *Marx and Contemporary Scientific Thought / Marx et la pensée scientifique contemporaine—1968 Paris* (1969).

⁸ Cf. H. Lefebvre, *The Explosion: Marxism and the French Uprising* (1969 [1968]), at 25–26 (emphasis added); see also UNESCO Symposium, *supra* note 7.

affirm his support for their invocation ‘Marx, Mao and Marcuse’.⁹ The published version of his colloquium paper included a minor amendment that referenced only the ‘events in May and June in France’.¹⁰ The message from this sequence for international lawyers is that their institutions commemorate the significance of revolution but decline support for local upheavals unless the dangers exceed the nation-state or enjoy success. Starting with the traditional formula situates revolution for international legal theory to make sense of its reiteration in different contexts during 1968.

A Internationalists and the Revolutionary State

The standard formula for legal and political theory identifies revolution with constitutional transformation for resolution by each sovereign state.¹¹ Imagining freedom in and through the experience of ourselves as citizens or members of a state who comprise ‘we the people’ belongs, of course, to a moment long before we became human in the legal sense, as articulated by post-war international law.¹² If internationalists doubted that our humanity could be the subject of international legal protection, even in 1945 or 1948 when values borrowed from the eighteenth century framed international declarations, one reason is the reduction of the universal each time it materializes as a political protagonist in context. The revolutionary dream that stitched rights to citizenship returns in the late modern designation in the practices and assumptions that re-pin the claims of ‘man’ or ‘humankind’ to its political location and, consequently, to the blind spots and sympathetic alliances of the state.¹³

⁹ Marcuse, ‘Re-examination of the Concept of Revolution’, 56(1) *New Left Review* (1969) 27. For details of Marcuse in Paris, see J. Castro, *Eros and Revolution: The Critical Philosophy of Herbert Marcuse* (2016), at 146. For reflection about the idea of ‘humanity’ or ‘humanism’ in the early projects of UNESCO, see, e.g., Betts, ‘Humanity’s New Heritage: UNESCO and the Rewriting of World History’, 228(1) *Past and Present* (2015) 249; Goodale, ‘UNESCO and the UN Rights of Man Declaration: History, Historiography, Ideology’, 8(1) *Humanity* (2017) 29.

¹⁰ Marcuse, *supra* note 9, at 32.

¹¹ See, e.g., Crawford, ‘Sovereignty as a Legal Value’, in J. Crawford and M. Koskeniemi (eds), *The Cambridge Companion to International Law* (2012) 117, at 121–122.

¹² For histories of human rights identifying the Enlightenment and the revolutionary constitutions of the eighteenth century as an important, originating departure for the post-1945 conception, see, e.g., L. Hunt, *The French Revolution and Human Rights: A Brief Documentary History* (1996), especially at 3, 29–31; L. Hunt et al. (eds), *Human Rights and Revolutions* (2007); L. Hunt, *Inventing Human Rights: A History* (2002); K.E. Tunstall (ed.), *Self-Evident Truths? Human Rights and the Enlightenment – Oxford Amnesty Lectures* (2012). For a counter-history of the multiple-cosmopolitan origins of contemporary human rights, especially since the 1970s, that resists tying the question of genesis to ‘the model of one-time breakthrough’ and notices several cosmopolitan movements, see, e.g., Moyn, ‘Plural Cosmopolitanisms and the Origins of Human Rights’, in C. Douzinas and C. Gearty (eds), *The Meanings of Rights: The Philosophy and Social Theory of Human Rights* (2014) 193, especially at 199.

¹³ The founding documents of post-war international governance attributed ‘declaratory’ not ‘substantive’ or protective status to universal human rights or dignity (e.g., Charter of the United Nations [UN Charter] 1945; Universal Declaration of Human Rights (1948 Declaration), GA Res. 217, 10 December 1948) and occurred in the context of debates about appropriate enforcement mechanisms. See, e.g., H. Lauterpacht, *An International Bill of the Rights of Man* (2013 [1945]), at 169–214. More recent retellings of the emergence of contemporary human rights downplay the significance of the 1948 Declaration in the 1940s and interest in it as an effective mode of protection, compared with the more productive initiatives since the 1970s. See, e.g., S. Moyn, *The Last Utopia: Human Rights in History* (2010); Moyn, ‘The Universal Declaration of Human Rights of 1948 in the History of Cosmopolitanism’, 40 *Critical Inquiry* (2014) 365; Liu, ‘Shadows of Universalism: The Untold Story of Human Rights around 1948’, 40 *Critical Inquiry* (2014) 385.

The mid-twentieth-century legal theorist, Hans Kelsen, and his former student Hersch Lauterpacht, articulated the standard view about revolution and international law when the international history of human rights was still embryonic or moot. Kelsen's pre-war publication, *Pure Theory of Law* (1934), and his elaboration of its relevant themes a decade later in *General Theory of Law and State* (1945), explain the relevance of revolution for an international system of positive laws.¹⁴ Lauterpacht's *Recognition in International Law* (1946) follows the same conceptual premise.¹⁵ Their views trace back at least as far to the 17th century and Hugo Grotius.¹⁶ Though the experience of catastrophic war and disenfranchisement reshaped international law in the decade represented by the late modern texts, the primary source of positivistic law was still the unwritten custom of sovereign states. These norms affirmed, according to Kelsen and Lauterpacht, the principle of state sovereignty by recognizing, rather than interfering with, the constitutional outcomes of subversive or revolutionary activity by citizens. The continuing importance of sovereignty for the law of nations explains why international lawyers (and others), despite their own curiosity and the abundance of examples for study, rarely claim revolution as an international legal category.¹⁷

The reluctance of international lawyers to influence revolution, however, does not assume perfect separation between revolution making and global law. Both Kelsen and Lauterpacht notice reflexivity between the domestic and international normative orders at times of constitutional crisis.¹⁸ Their position highlights the paradoxes of a tradition that simultaneously declines disinterest by legal internationalists in revolution and hesitates to interfere with the affairs of states. The relationship between international law and revolution becomes clearest in the context of recognizing new regimes and explaining the continuity of states as legal entities. Kelsen says 'according to international law, victorious revolutions or successful *coups d'état* are to be interpreted as procedures by which a national legal order can be changed' as '[b]oth events are, viewed in light of international law, law-creating facts'.¹⁹ Lauterpacht

¹⁴ H. Kelsen, *General Theory of Law and State* (1945), at 221, 368; see also H. Kelsen, *Pure Theory of Law* (1967), at 215; H. Kelsen, *Principles of International Law* (2003 [1952]).

¹⁵ H. Lauterpacht, *Recognition in International Law* (2013 [1947]).

¹⁶ Kelsen, *Principles*, *supra* note 14, at 93.

¹⁷ For an insightful survey of the relevant literature, *Grundnorm* cases and reflections on the idea of 'revolutionary legality', see Kumar, 'International Law, Kelsen and the Aberrant Revolution: Excavating the Politics and Practices of Revolutionary Legality in Rhodesia and Beyond', in N. Rajkovic, T. Aalberts and T. Gammeltoft-Hansen (eds), *The Power of Legality* (2016) 157, at 183–186. Kumar considers the absence of any sustained 'post-Wall' scholarly attention to revolution as an 'organizing category' or 'concept in itself' in international law to be an anomaly in light of earlier attention by national courts to Kelsen's 'doctrine of revolutionary legality', which articulates the circumstances in which new regimes become visible to international law (at 158–160). Kelsen's principle does not, however, transform revolution into an international legal category in the different sense (and consistent with Kumar's reading) of being a zone for juridical regulation and interference (see notes 20–22 below). Rather, the principle confirms revolution to be an exception to the regulatory catchment of international law and explains the enduring hesitancy of internationalists to interfere in revolutionary situations.

¹⁸ Lauterpacht, *supra* note 15, at 87–97.

¹⁹ Kelsen, *General Theory*, *supra* note 14, at 221.

agrees that ‘the nature of the change is of no legal relevance’ because ‘international law does not stigmatize revolutions as unlawful’ but, rather, asks if the revolution is ‘fully successful’.²⁰ For him as for Kelsen, successful revolution enlivens the principle of recognition of governments, both practically and legally, because the new regime becomes the political and legal agent for the state as a participant in global affairs.²¹ Each accepts that refusing to recognize a revolutionary regime would challenge the independence of the state and, therefore, the logic of international order. Carl Schmitt confirms the same formula when he says ‘all approaches to a legal world revolution lead to the state’ because ‘a transfer of constituent power from nation to humanity is hardly conceivable’ where the United Nations (UN) still ‘serves not only unity but also the *status quo* of its numerous sovereign members’.²² Changing the idea of ‘humanity’ might make a difference but not for Schmitt and not for Lauterpacht, yet.²³

The reasoning that ensures the continuity of the state after revolution also explains why international lawyers equivocate, despite their discomforts, about the existence of a general right of peoples or citizens to resist repressive regimes.²⁴ Lauterpacht’s 1945 proposal for an International Bill of Human Rights, before the international community agreed to universal human rights, did not include a free-standing right to resistance.²⁵ The relevant provisions in the 1948 Universal Declaration of Human Rights (1948 Declaration) (preamble and Article 30) and the 1950 European Convention of Human Rights (Articles 15–17) discourage challenges to public order rather than recognize a right to revolution.²⁶ Costas Douzinas elucidates the tension that continues today between the political expectation that resistance leads to civic freedom and the impossibility of articulating a normative frame for revolution in international law. He explains:

The right to revolution does not exist independently ... nor is it free-standing. It appears historically as (the right to) resistance; people in streets and squares challenging the dominant order prepare but don’t guarantee radical change. ... In politics and law, resistance has become a ghostly normativity, the ‘right to the event’. ... It has been permanently exorcized but eternally returns as the most important, perhaps political, command.²⁷

²⁰ Lauterpacht, *supra* note 15, at 91–93

²¹ *Ibid.*

²² Schmitt, ‘The Legal World Revolution’, 72 *Télos* (1987) 73, at 80, 87; see also Schmitt’s consideration of the rule of recognition of rebel governments. C. Schmitt, *The Nomos of the Earth* (2006 [1950]), at 295–308.

²³ Schmitt, *supra* note 22; Lauterpacht, *supra* note 15, at 93.

²⁴ Lauterpacht, *supra* note 13, at 43–46; Lauterpacht, *supra* note 15, at 93. For references to the enduring dissidence between the political or moral, and the uncertainty about whether a legal right to revolution reflects the difference between ‘fact’ and ‘form’, see, e.g., Lauterpacht, *supra* note 15; C. Douzinas, *Philosophy and Resistance in the Crisis* (2013), at 83–84.

²⁵ Douzinas, *supra* note 24, chs 9, 10, at 92–165.

²⁶ Cf. for a less conservative reading of these provisions that notice an emergent right to resistance or revolution on humanitarian grounds. See, e.g., A. Cassese, *The Human Dimension of International Law: Selected Papers of Antonio Cassese* (2008), at 432–436; Lippman, ‘The Right of Civil Resistance under International Law and the Domestic Necessity Defence’, 8(3) *Dickinson Journal of International Law* (1990) 349. 1948 Declaration, *supra* note 13.

²⁷ Douzinas, *supra* note 24, at 83.

The identification of resistance as a tactical manoeuvre for freedom legitimates rebellion in certain contexts but does support an unequivocal legal right to revolution where resistance entails an illegal challenge to the present legal order. Instead, priority for state sovereignty leads diplomats and international lawyers to exclude resistance (the process) or revolution ('the step after resistance', as Douzinas suggests) as legal categories with specific and justiciable rights and responsibilities.²⁸ The same logic that privileges state sovereignty disallows internationalists the privilege of a simple retreat.

The idea of state sovereignty not only reinforces the authority and conservatism of the classic formulation but also makes room for new approaches that pay attention to the claims of civilians. At its most obvious, international legal thought does not ignore the problem of revolution nor does it remain disinterested in the outcome and processes of change but, rather, prioritizes questions relevant to the functioning of the international community. The traditional formulation simply confirms the relevant actors for diplomatic encounter. Its priority for the independence of states also affirms, however, the ambitions of constituents who legitimate a government and its authority to represent the people in international affairs. In that gap, between the state, as the relevant international actor, and the agency of the body politic, as the reason for its recognition, international legal thought is yet to find a bridge. There is no juridical measure, at least for Kelsen, Lauterpacht and Schmitt, to test the legitimating nexus between the body politic and its government that considers the empirical realities of political authority. That is why international law leads back to its habitual truth of state independence that, at least in theory, precludes internationalists from crossing boundaries.

Arendt confirms the logic of the traditional rule (and the gap it opens) when she defines revolution as the political achievement that constitutes a new legal order and designates the governing authority of the state. She says revolution inaugurates 'a new public space with new political standards' and, as such, is both a law-making and, more dramatically, a world-making fact because it 'spells the definite end of an old order and brings about the birth of a new world'.²⁹ Arendt's reference to 'public space' identifies the sovereign's political authority as the agent of 'we the people', repeating the logic of the internationalist's rule. The nuance is important because authority, like political freedom, is not a gift or capacity but, rather, a derivative of 'the actual body politic' and depends entirely, in Arendt's view, on 'the people' as the 'constituent powers'. Respect for a new government is paramount because it also respects the integrity of the political process where 'revolution on the one hand, and constitution and foundation on the other, are like correlative conjunctions'.³⁰ Arendt's reference to 'correlative conjunctions' holds a subtle invitation for internationalists to rethink the limits of the traditional rule. The political theorist noticed that her generation was

²⁸ *Ibid.*

²⁹ H. Arendt, *On Revolution* (1963), at 32.

³⁰ Arendt, *supra* note 29, at 117; H. Arendt, 'Revolution and Public Happiness', 30 *Commentary Magazine* (1 November 1960) 413, at 417.

‘under the spell’ of a historical development that forgets the substance of authority by associating the idea of a political constitution, and the authority that flows from it, ‘with a lack of reality and realism, with an overemphasis on legalism and formalities’.³¹ She deploys the same logic of internationalists to expose the gap between legal authority and the ‘constituent powers’ of the people and its possible crossing. The suggestiveness of her position for the revision lies in her observation about the tendency to over-formalization, which forgets that the ultimate source of authority of governments, or of international rules of state sovereignty, emanates from ‘we the people’.

B Witnessing Revolution in 1968

The traditional formula dominated international juridical reflection and practise in 1968 with few adjustments. Though unsurprising, the repetition of old habits takes on another character in the context of 1968. That year marked an extraordinary opportunity for the international community to pause to reconsider how liberal international law might reconceive its response to revolution in the post-industrial world. Indeed, another Lauterpacht might wonder whether, given the progress of internationalists towards the protection of human rights and the self-determination of colonized peoples, it was time to revise their nonchalance and speak for or against the techniques and motives of resistance wherever these occurred. He might also notice the substantiation of the revolutionary doctrines of inherent rights expressed in 1776 and 1789 (and which inspired his proposal for an international bill of the rights of man in 1945) in the figure of the *soixante-huitard* as well as its outline in the moving reel of protest that zigzagged across the globe.³² The humanist inclinations of the *soixante-huitard* made it an agent for the universal subject that simultaneously refashioned in the multiple locations of resistance during 1968. Noticing the symbolic resonance of the French protagonist of *Mai 1968* recasts it as a proxy for the abstract juridical subject championed by international lawyers and for the subjects of urban protest, wherever civic strife occurred.

For international lawyers, the *soixante-huitard* has especial significance because it recasts the liberal origins of their humanism at the site of its first articulation. The students laughed at their 18th-century lineage by substituting the revolutionary refrain with a new claim for ‘*liberté, égalité and sexualité*’.³³ In the Latin Quarter, and then all over France, the visceral demands of the human being as an embodied subject with unmet desires repeated as the focus for revolutionary attention and/or affirmation.

³¹ Arendt, ‘Revolution and Public Happiness’, *supra* note 30.

³² See explication of the lineage of natural rights that crystallized in the French Declaration of the Rights of Man and Citizen. Déclaration des droits de l’homme et du citoyen, 26 August 1789, available at www.refworld.org/docid/3ae6b52410.html; and in the American Declaration of Independence 1776. Declaration by the Representatives of the United States of America, 4 July 1776 (General Congress assembled), available at www.loc.gov/rr/program/bib/ourdocs/declarind.html. Lauterpacht, *supra* note 13, at 31, 45.

³³ M. Fournier, ‘Mai 1968 et la libération des mœurs’, *Sciences Humaines* (Mai 2008), available at www.scienceshumaines.com/mai-1968-et-la-liberation-des-moeurs_fr_22190.html; J. Lichfield, ‘Egalité! Liberté! Sexualité!: Paris, May 1968’, *The Independent* (23 February 2008), available at www.independent.co.uk/news/world/europe/egalit-libert-sexualit-paris-may-1968-784703.html.

The laughter and ‘unfettered speech’ of the students highlights humanism, or, rather, its variation, to be the equivocation in the old calculation that separates revolution and international law. The key to understanding how the humanism of protest relates the *soixante-huitard* to the international lawyer and to the transnational phenomena of urban protest in 1968 begins with the plurality that is possible within the idea.³⁴ Humanism took multiple, dissident forms in 1968 in law and politics that frequently used the secular or irreligious motif – the one that humanists identify with themselves as the model subject – as a point of departure as much as a tool of solidarity and self-definition. The universal category reincarnated in the narrative of the *soixante-huitard* that became the humanist echo weaving in and through transnational urban situations that spontaneously embodied, in multiple variations, the same idea.

If Lauterpacht did not possess a legal vocabulary with which to champion the humanist impulses of revolution, 1968 provided multiple opportunities for radical experimentation. There were reflective pauses in juridical practice where upheavals threatened international security or where rebel rulers lacked popular backing in states still subject to international administration. Revolutionary situations in South Rhodesia and Czechoslovakia are notable examples where the outline of the *soixante-huitard* reappeared in idiosyncratic formats and attracted juridical or institutional attention. The ‘will of the people’ in these contexts looked beyond effective authority or stability to encompass the ‘willingness’ of the international community to recognize and work with the new regime or, in other cases, adjust to its usurper.³⁵ How the 1945 Charter of the United Nations (UN Charter) might influence revolutionary situations was still uncertain, though the seed for greater influence was present. Even in these examples, however, international derision for violence or faith in humanity did not change the formulaic privileges of the post-industrial nation-state. ‘We the people’ snatched the *soixante-huitard* (or its substitute in South Rhodesia or Prague) from victorious revolution just as ‘we the people’ bent to the will of sovereign states in a plurality of locations and forgot Lauterpacht’s suggestion for a universal citation.

1 *When the Soixante-Huitard Resurfaced in Southern Rhodesia*

The juridical tradition, exemplified by the absence of the *soixante-huitard* from the contemporaneous celebrations of Karl Marx at UNESCO, repeated in the context of decolonization. Rebellions by colonized peoples in the decade before 1968 prompted a return to Kelsen by judges and constitutional lawyers in states seeking independence from British administration in Pakistan, Southern Rhodesia, Uganda and Southern

³⁴ For variations of the idea of humanism, see, e.g., A. Nehamas, ‘The Rescue of Humanism: The Liberal News from Paris’, *The New Republic* (12 November 1990), at 30.

³⁵ The interface between recognition and capacity to participate in international affairs through a commitment to agreed principles or democratic standards was the subject of contemporaneous reflection by the editor of the *AJIL* in 1969. E.g., Fenwick, ‘Recognition of De Facto Governments: Old Guide Lines and New Obligations’, 63(1) *AJIL* (1969) 98.

Nigeria.³⁶ Kelsen helpfully elucidated for these jurists that revolution was ‘a legal, law-creating act’ insofar as it establishes a new constitution with a new basic norm that endows the revolutionary government with legal authority.³⁷ The decisions attracted criticism by English jurists who disagreed about the use of legal theory and international law to challenge the authority of imperial legislatures. A Privy Council decision in 1968 is a prominent example of this approach in the context of rebellion and constitutional transformation in Southern Rhodesia.³⁸ The appellate court identified the question about the ‘effectiveness’ of post-revolutionary governments ‘to be a conception of international law’ that was ‘quite inappropriate in dealing with the legal position of a usurper within the territory of which he has acquired control’.³⁹ The driving impetus for the Court was not its lack of expertise in such matters of law but, rather, its hesitancy to second-guess the political question concerning the recognition of the rebel government that rivalled British rule. The political stakes directed the legal response where ‘the legitimate Government had been driven out but was trying to regain control’ because there ‘it would be impossible to hold that the usurper who is in control is the lawful ruler, because that would mean that by striving to assert its lawful right the ousted legitimate Government was opposing the lawful ruler’.⁴⁰

Kelsen’s name was missing, but his articulation of the legal question echoed in the Court’s thinking around the ‘historical fact’ that makes a revolutionary constitution lawful. Lord Reid rearticulated the same logic underpinning the separation of international law from the sovereign state when he wrote for the majority:

It is a historical fact that in many countries – and indeed in many countries which are or have been under British sovereignty – there are now regimes which are universally recognised as lawful but which derive their origins from revolutions or *coup d’état*. The law must take account of that fact. So there may be a question how or at what stage the new regime became lawful.⁴¹

The Privy Council hesitated, however, to confirm the legality of the new regime where divided sovereignty or political rivalry complicates the ‘historical fact’. English judges and academics were not against Kelsen per se but, rather, against the misuse of his

³⁶ E.g., *The State v. Dosso* (1958) 2 Pakistan SCR 180, at 185–186; *Uganda v. Commissioner of Prisons ex p. Matovu* (1966) EA 513; *Madzimbamuto v. Lardner-Burke N.O.*, *Baron v. Ayre N.O.*, (1966) (4) SA 462 (Gen. Div. Rhodesia HC), [1968] 2 SA 284 (App. Div. H C), [1969] 1 AC 645 (JCPC); *R. v. Ndhlovu* (1968) 4 SA 515; *E.O. Lakanmi and Kikelomo Ola v. Attorney-General (Western State) & Ors*, SC 58/69 (unreported).

³⁷ Kelsen, *Principles*, *supra* note 14, at 118.

³⁸ *Madzimbamuto*, *supra* note 36; The academic response to the ‘Grundnorm’ cases citing Kelsen included articles by prominent constitutional law experts in England and, in particular, those with tenure at the University of Oxford including Eekelaar, ‘Splitting the Grundnorm’, 30 *Modern Law Review* (MLR) (1967) 156; Eekelaar, ‘Rhodesia: Abdication of Constitutionalism’, 32 *MLR* (1969) 19; Eekelaar, ‘Principles of Revolutionary Legality’, in A.W.B. Simpson (ed.), *Oxford Essays in Jurisprudence* (1973) 22; Finnis ‘Revolutions and the Continuity of Law’, in Simpson, *ibid.*, 44; Harris, ‘When and Why Does the Grundnorm Change?’, 29(1) *Cambridge Law Journal* (1971) 103; Honoré, ‘Reflections on Revolutions’, 2 *Irish Jurist* (1967) 268; Ojo, ‘The Search for a Grundnorm in Nigeria: The Lakanmi Case’, *ICLQ* (1971) 117; see also J. Dickson, *Philosophical Foundations of European Union Law* (2012), at 28.

³⁹ *Madzimbamuto*, *supra* note 36, at 1118.

⁴⁰ *Ibid.*

⁴¹ *Ibid.*

name to explain the unauthorized and haphazard secession of colonized peoples from British administration. The approach exemplified the conservatism that led jurists to defer to the political choices of a popularly elected Parliament and its executive. Respect for 'we the people' meant prioritizing the choices of the British Parliament even when it does 'certain things' that 'most people would regard ... as highly improper' on 'moral' or 'political' grounds.⁴² The message for international law from all sides was ultimately Kelsen's idea that international law should not interfere in revolutionary processes because regime change is a matter between the people and those who rule them.

Internationalists followed suit by admonishing the minority regime installed in Southern Rhodesia in 1965 because it lacked popular support. At the end of May 1968, when the student upheavals in France were subsiding, the UN Security Council reiterated its earlier response to events in Southern Rhodesia that criticized the rebel government as illegal and a threat to the rights of peoples to self-determination. The vote supporting the Security Council's resolution on 29 May 1968 coincided with the infamous decamping of de Gaulle from Paris at the climax of the French crisis.⁴³ The irony of the coincidence was twofold because both the president and the international institution ignored the claims of revolutionaries and used, in different ways, 'we the people' as an excuse to preserve the *status quo*. The narrative of the *soixante-huitard* replayed in the experience of secessionist leaders in Southern Rhodesia when their wish for political autonomy and their visceral, if violent, demands for legal recognition peaked and then receded against the authority of the pre-existing regime. The international order prioritizes human life but restricts the lives within its view in revolutionary moments to citizens subject to sovereign rule and, in the context of secession, to those citizens still subject to the legacies of colonial rule.

A telling characteristic of the international response to the situation in South Rhodesia was the contradiction between its imperial effects and its anti-imperial tone. The incongruity agreed with the outcome of the Privy Council decision made only weeks later. The UN Security Council deemed the continuing 'rebellion' and 'illegal regime' to be a threat to international peace and security and imposed measures to thwart the minority regime and 'render moral and material assistance to the people ... in their struggle to achieve their freedom and independence'.⁴⁴ The idea of the 'people' was an important rhetorical theme for why internationalists refused to intervene in the revolutionary situation in its anti-colonial setting. Resolution 253 burdened the rebel government in multiple ways and included sanctions restricting trade, travel, financial assistance or other support for its leaders and their associates. The Security Council spoke for the choices of peoples and used the language of human rights not to propel or support revolutionary action but, rather, to condemn and thwart rebel

⁴² *Ibid.*, at 117.

⁴³ SC Res. 253, 29 May 1968. The Security Council adopted consistent resolutions on the question of the situation in Southern Rhodesia in 1963, 1965 and 1966. For details of the French president's departure and return, see, e.g., D. Singer, *Prelude to Revolution: France in May 1968* (2002), at 195–201.

⁴⁴ *Ibid.*

rule. The question of effectiveness that was so important for international legal theory became less about control or authority than the fact that the rebels seized power without popular support. The contradiction evident from the sequence is that the language of internationalists prioritized the political agency (and human rights) of citizens when political and legislative power still belonged to an imperial authority.

2 *When the Soixante-Huitard Resurfaced in Prague*

The standard separation of international law and revolution repeated in the post-industrial world when the drive for change threatened the imperial authority of Soviet ideology. Although the UN did not intervene in transnational protest during 1968, the Prague Spring almost made an exception when the performative quintessence of the *soixante-huitard* ricocheted from Paris to the streets of Prague. Though the idiosyncrasies of the scene altered, the same humanist impulse for embodied recognition presented as the question that could undo or revolutionize the existing political order. The situation also focused international institutional attention, if momentarily, on the principles of self-determination, respect for human rights and fundamental freedoms and the role of the UN in supporting states to achieve these goals.⁴⁵ The Czechoslovakian people and government sought to reform the socialist state from the inside through a new model of socialism that was more humane and independent of Soviet interest or interference. There was no request for international support during the initial phases of reform from February 1968 when the Czechs sought to engineer their own version of socialism. The UN Security Council's brief interest in the situation arose in response to the Soviet-led military intervention by 500,000 Warsaw Pact troops on 20 August 1968 and calls by the Czech government for urgent assistance on 21 August 1968.⁴⁶ International concern quickly became disinterested observation when the Czechs voluntarily conceded to Soviet demands.

Details of the crisis in late August confirm the rigidity with which the traditional formula applies in cases where revolution disagrees with imperial control. When the Soviets invaded Czechoslovakia, the Czechs did not respond with force. Rather, the Czech leaders successfully lobbied liberal members of the UN Security Council to propose a draft resolution alleging violations of the 1955 Warsaw Pact coordinating the affairs of the Eastern Bloc and fundamental norms of international law (Draft Resolution S/8761).⁴⁷ No resolution followed when the Soviet state mobilized its right of veto under Article 27(3) of the UN Charter to protect its sphere of influence and

⁴⁵ Legality of Czechoslovak Invasion Questioned in U.N. Special Committee on Principles of International Law, 12 September 1968, reprinted in 7(6) *ILM* (November 1968) 1265.

⁴⁶ The letter from Canada, Denmark, France, Paraguay, the United Kingdom and the USA (SC Doc. S/8758, 21 August 1968) initiated an urgent meeting on 21 August 1968 (SC 1441st session) and further, formal discussion until 27 August (SC 1441st–1445th meetings). The Soviet Union objected to the situation being included in the Security Council's agenda and blocked international action. Letter USSR to SC, Doc. S/8759, 21 August 1968.

⁴⁷ Parties to the Letter S/8758 sponsored a draft resolution. SC Res. S/8761, 22 August 1968 (Draft Res. S/8761).

thwart international intervention.⁴⁸ Formal debate in the Security Council about the situation ended after negotiations between the Czechs and the Soviets in Moscow on 23–26 August succeeded in securing the release of Czech leaders from Soviet detention. The Czechs, however, relinquished their wish for reform and succumbed to an alarming new epoch of state repression.⁴⁹ The Security Council focused on the unfolding security crisis during its brief climax in late August and remained ‘seized’ of the matter in December, though institutional attention did not mean international ‘support’ or responsibility.⁵⁰ A clear majority of states rejected the Soviet occupation as an invasion that was ‘repugnant’ to the conscience of mankind.⁵¹ Nevertheless, there was no realization of the liberal idea of freedom that prioritizes the democratic will of citizens until the Velvet Revolution in 1989.⁵²

In the Czech example, the Soviets and internationalists used the survival of the sovereign state to explain their position. The Soviets defended the idea of a socialist state, conceived as a ‘sphere of influence’ or ‘commonwealth of socialist states’ governed by the 1955 Warsaw Pact and its ambitions for the ‘world revolutionary movement’, as the rationale for its military intervention.⁵³ The Soviets described their paternalism as ‘fraternal assistance’ against the dangers of ‘revisionism’ and ‘counter-revolution’ under the reactionary Czech government.⁵⁴ Military force and occupation was a technique aimed at ‘restoration’ or ‘normalization’ of the model socialist state. Draft Resolution S/8761 reiterated another concept of equal sovereignty that prioritized political independence and territorial integrity in the liberal vein, which was then popular with the collective right of peoples to self-determination. Its terms supported the Czech government by condemning Soviet intervention and demanding the immediate withdrawal of forces or other forms of intervention.⁵⁵ The draft resolution sought a diplomatic result but, understandably, given the timing and relevant antagonist, did not envisage a military solution pursuant to Article 42 of the UN Charter.

⁴⁸ UN SC 1443rd meeting (22–23 August 1968). Canada proposed a second draft resolution on 22 August though Soviet opposition prevented voting on it (Res. S/8767, 1443rd meeting (22–23 August)) and discussions ensued at the UN SC 1444th–1445th meetings (23–24 August).

⁴⁹ Czechoslovakia requested removal of the draft resolution and debate from the Council’s agenda by letter to the Security Council. SC Res. S/8785, 27 August 1968.

⁵⁰ UN SC 1441st–1445th meetings.

⁵¹ Draft Res. S/8761, *supra* note 47.

⁵² For a response to the 1989 and 1968 upheavals by Czech diplomat and president of the UN General Assembly (2002–2003), Jan Kavan, see Konvicka and Kavan, ‘Youth Movements and the Velvet Revolution’, 27(2) *Communist and Post-Communist Studies* (1994) 160.

⁵³ Treaty of Friendship, Co-operation and Mutual Assistance 1955, 219 UNTS 2962 (between Albania, Bulgaria, Hungary, German Democratic Republic, Poland, Romania, USSR and Czechoslovakia). The USA repudiated the Soviet suggestion that there could be any ‘sphere of influence’ sanctioned by it and representative of either side of Cold War politics. United States Statement on Spheres of Influence, reprinted in 7(6) *ILM* (November 1968) 1299.

⁵⁴ E.g., Letter from Warsaw Meeting of Communist Parties Criticizing Czechoslovak Reforms 15 July 1968, reprinted in 7(6) *ILM* (November 1968) 1265.

⁵⁵ Proclamation of the Presidium of the Czechoslovakian National Assembly, 21 August 1968, reprinted in 7(6) *ILM* (November 1968) 1286; Appeals and Protests of the Czechoslovakian National Assembly, 22 August 1968, reprinted in 7(6) *ILM* (November 1968) 1290; Draft Res. S/8761, *supra* note 47, Art. 2.

The Czech government, however, was not against socialism but, rather, asked for the freedom to decide what form or iteration of socialist politics should govern national politics and guide the state's part in international relations. It interpreted the Warsaw Pact as enabling a member state to be part of the socialist community, without any promise of unqualified unity of national interest nor burdened by the threat of Soviet occupation, on terms that safeguarded it as a 'socialist, sovereign and free State'.⁵⁶ The Prague Spring was a political claim for the reformulation of the socialist state, not its abolition, with 'fresh hope' and a 'plan to humanize the regime'.⁵⁷ Although a majority of potential votes in the UN Security Council clearly agreed, the absence of any retaliatory force by the Czechs or the international community (neither the North Atlantic Treaty Organization nor the Security Council responded to the invasion with force) had the unintended effect of transforming Soviet-led violence into a legal, or at least a legally permissible, category. It did not, unremarkably, turn revolution into a legal category by recognizing that revolutionaries could have rights and duties under international law.

If there was a winner, it was not the peaceful ambitions of the international community or international law or the local impulse for a revitalized, less austere form of socialism. The imperial ambition of a permanent member of the UN Security Council and its commitment to an ideological idea of revolution determined the international outcome and the institutional response. Chapter VII of the UN Charter once again provided a legal framework for Soviet ambition by permitting its resort to force. Its right of veto, and its willingness to use it, also clarified that the outcome of revolution belonged not to the people but, instead, to the ambitions of the imperial state. International law permitted the choices of the sovereign state to exceed, once again, the revolutionary spirit of the people. Soviet obsession with the perpetual state determined the influence of international law on revolution in 1968. The international community watched revolutionaries and defended, as theorists and jurists also do, the rights of the people to self-determine, to overthrow or revitalize old ways of governance and to frame their own post-revolutionary order. The condition of respect for the will of the people, however, was confirmation of the hegemony of the imperial state, letting sovereign force decide for the people what the people asked to decide for themselves.

Arendt was aware of this contradiction – that the historical claim of revolutionaries for self-determination or sovereign freedom is also the bind that routinely, in different ways and in different contexts, disarms them – and she set out to shift it. The problem manifests in revolutionary situations because there the agonies and longings of peoples directly confront the authority, promise and limitations of the perpetual state. In the context of the 18th-century revolution in America, Arendt explains that '[n]

⁵⁶ Declaration of the Czechoslovak National Assembly Concerning Views on Neutrality and the Warsaw Pact, 25 August 1968, reprinted in 7(6) *ILM* (November 1968) 1305, at 1305.

⁵⁷ Vaculik, 'Two Thousand Words: A Manifesto for Prague (1968)', 3(9) *Vertigo Magazine* (2008), available at www.closeupfilmcentre.com/vertigo_magazine/volume-3-issue-9-spring-summer-2008/two-thousand-words-a-manifesto-for-prague/.

othing ... indicates more clearly that the revolutions brought to light the new, secular, and worldly yearnings of the modern age than this all-pervasive preoccupation with the permanence, with a “perpetual state” which, as the colonists never tired of repeating should be secure for their “posterity”’.⁵⁸ The colonists’ revolutionary desire for an ‘eternal City on earth’ echoes the desires of peoples and imperial states to shape the meaning of political freedom in their sphere of influence and shares their failure to fully understand that ‘freedom is freedom’ irrespective of its ideological setting. Arendt says that ‘freedom’ can exist in either capitalist or socialist orders if there are protections for civic agency and the absence of state sanctioned expropriation.⁵⁹ The defence of state sovereignty also leads internationalists and revolutionaries to forget that they share a singular, though disparate, idea of freedom that searches for a more humane world. That this humanist ‘freedom’ straddles ideologies, laws and revolutionary situations is the missing link that might prompt internationalists to notice revolutionaries in a new way.

3 Faulty Humanisms

Arendt enters 1968 as a witness underwhelmed by the failures of revolution and international law to humanize the world in the 20th century. Her tacit agreement with international legal theory about the law-making significance of successful revolution clarifies her charge against each phenomenon by reinscribing ‘humanism’ – a term with multiple designations – to mean the constituent power of the people. Her disappointment also puts her revolutionary theory into conversation with her concerns about international law, a manoeuvre she never articulates explicitly. The mistake of revolutionaries and internationalists, according to this reading of Arendt, is that both articulate a different version of a humanist claim but fail to realize it because each overlooks the humanizing potential of political action. That is, both seek a more humane world but forget that the ‘public happiness’, ‘public freedom’ and ‘public spirit’ that emanates from the people is the critical condition.⁶⁰ As Arendt explains, ‘we humanize what is going on in the world and in ourselves only by speaking of it, and in the course of speaking of it we learn to be human’ where ‘to speak’ entails a public (and, consequently, a political) utterance or performance.⁶¹ Arendt’s reflections elucidate the faulty humanisms that traced through both international law and

⁵⁸ Arendt, *supra* note 29, at 221, 223.

⁵⁹ Arendt says in response to Czech situation in 1968, for example, that ‘just as socialism is no remedy for capitalism, capitalism cannot be a remedy or an alternative for socialism ... freedom is freedom whether guaranteed by the laws of a “bourgeois government or a “communist” state. ... From the fact that communist governments today do not respect civil rights and do not guarantee freedom of speech and association it does not follow that such rights and freedoms are “bourgeois”’. Arendt, ‘Thoughts on Politics and Revolution: A Commentary’ in H. Arendt, *Crises of the Republic* (1970) 199, at 220–221; see also note 75 below.

⁶⁰ Arendt, *supra* note 29, at 213–214.

⁶¹ Arendt, ‘On Humanity in Dark Times: Thoughts about Lessing’, in H. Arendt, *Men in Dark Times* (1983 [1974]) 3, at 25.

revolution in 1968 and that, for internationalists, unsettle their assumed disinterest in revolutionary situations.

To suggest that Arendt speaks as a ‘humanist’ confirms the complexity of the idea and the notion that it makes room for a variety of iterations. The point is that the concept of humanism exists in a ‘continuum in the history of philosophy’ that manoeuvres from 18th preoccupations with the individual subject through varying reiterations towards the anti-humanism that was popularized in French philosophy during the 1960s.⁶² Although anti-humanists dominated French intellectual fashions in 1968, their attempt to align or sympathize with the *soixante-huitard* was only part of a more complex and contradictory current that did not unequivocally flow both ways.⁶³ At the very least, their abstract structuralism, Marxism and call to violence was at odds with the naivety and embodied reality of the *soixante-huitard*, which did not clearly announce its intellectual lineage – humanist or otherwise. Some observers notice the students’ indifference, rather than opposition, to 18th-century thinking or to the new sensitivity to human rights, anti-totalitarianism and the ideals of liberalism.⁶⁴ The claims of the *soixante-huitard*, nevertheless, rearticulate a version of the perennial desire of revolutionaries for a more humane, just and inclusive world and, therefore, are part of the complicated story of humanism. In its humanist longings, it shares the disappointments and expectations of all revolutionaries and was an ally as much as a curiosity for Arendt and every internationalist in 1968.

A The Humanizing Politics of Revolution

Arendt scholars often read her as a ‘revolutionary humanist’ or ‘political humanist’, though, to be precise, she introduces a form of humanism via the ancients and not the revolutionary tradition set in the 18th century or experienced by her contemporaries.⁶⁵ Modern and late modern history provides insights and ideas but not a map for Arendt’s thesis about revolution or her aspirations for public freedom. She famously critiques the version of humanism associated with the revolutionary proclamation of the 18th century: ‘[L]iberté, fraternité, égalité’. With these words, the French Revolution set the tone for subsequent revolutionary situations but, in Arendt’s view, lacked the political tonality needed to convert the wish for liberation into freedom. In 1789, revolt led the French people not to freedom but, rather, to tyranny because they confused liberty or private welfare (that is, the absence of want or wealth and so on) with public freedom and its promise for speech and action (that is, to be heard

⁶² For studies about the potential plurality of the concept, see e.g., Nehamas, ‘The Rescue of Humanism’, *The New Republic* (12 November 1990), at 30–31; D. Alderson and R. Spencer, *For Humanism* (1988).

⁶³ See Culler, ‘French Structuralism’, R. Shattuck, ‘Humanisms’ and T. Pavel, ‘The Return of the Individual and the New Humanism’, all in L.D. Kritzmann, *The Columbia History of Twentieth-Century French Thought* (2006) 110, 260, and 323, respectively.

⁶⁴ Pavel, *supra* note 63, at 323.

⁶⁵ E.g., H. Arendt, *The Origins of Totalitarianism* (1950), at 277; for references to Arendt as a ‘revolutionary humanist’, see M. Canovan, *Hannah Arendt: A Reinterpretation of Her Political Thought* (1992), at 163–166, or as ‘political humanist’, see M.H. McCarthy, *The Political Humanism of Hannah Arendt* (2012).

and seen). The mistake meant the impoverished *malheureux* ceased to be politically relevant to the new 'post-revolutionary' regime and vulnerable to further exploitation, exclusion and unhappiness. A similar error undid the greater progress towards revolution in America because the new constitutional laws protected property or private interests rather than participatory entitlements.⁶⁶ Only public freedom – the political freedom to participate – secures public happiness and marks an individual life as a human being worthy of protection and, therefore, fully human, as Judith Butler (who also finds inspiration in Arendt's broader oeuvre) repeatedly reminds 21st-century readers. Butler agrees with Arendt that the revolutionary formula "we the people" – the utterance, the chant, the written line – is always missing some group of people it claims to represent'.⁶⁷ In their place is the people as a 'multiheaded monster' or mob who cry for bread with one voice that articulates the identical cause of their suffering.⁶⁸

The invitation to humanize and refigure the world together through participatory politics is the *raison d'être* and the defining turn that Arendt identifies with revolution; this is public freedom or the radical actuality of embodied, public spirit realized beyond the mob's discontented chant. Three texts refine and re-contextualize Arendt's thesis about humanism in the context of revolution and include responses to *Mai 1968* that she published in 1969 and 1970: *On Revolution* (1963); a lecture given in December 1968 and published as 'Reflections on Violence' (February 1969) and the companion piece that transcribes an interview entitled 'Thoughts on Violence and Revolution' (1970) and that reappears in amended form in her classic essay 'On Violence' (1969).⁶⁹ These reflections refine Arendt's broader project about how to regenerate civic morale after atrocity and explain her break with modern revolutionary theory.

Arendt belonged to Europe's interwar generation of disenfranchised Jews who lived in exile in Paris after Hitler's ascent in 1933 and before the fall of France in the summer of 1940. Her history is important because statelessness excluded her from the categories of 'man' and 'citizen' that, in her estimation, thread 18th-century revolutionary

⁶⁶ Arendt's famous critique of modern revolution arises from her response to the French Revolution and its replay (in different economic circumstances and with different results) in the almost contemporaneous American example. Her thesis informs her analysis of 20th-century revolution, as the progeny of the 18th century, and outlines the reasons for preferring the classical models set by Greece and Rome. Arendt, *supra* note 29. For a summary of her thesis, see Arendt, 'Revolution and Public Happiness', *supra* note 30.

⁶⁷ J. Butler and S. Berbec, 'We Are Worldless without One Another: An Interview with Judith Butler', *The Other Journal: An Intersection of Theology and Culture* (26 June 2017), available at <https://theotherjournal.com/2017/06/26/worldless-without-one-another-interview-judith-butler/>; see also the classic texts, e.g., J. Butler, *Frames of War* (2016 [2009]); J. Butler, *Precarious Life: The Powers of Mourning and Violence* (2006).

⁶⁸ H. Arendt, *On Revolution* (1963), at 84–85.

⁶⁹ H. Arendt, 'Lecture: Power and Violence' (Bard College, December 1968), available at www.bard.edu/arendtcollection/gallery.html, which was published as Arendt, 'A Special Supplement: Reflections on Violence', 12(4) *New York Review of Books* (27 February 1969), available at www.nybooks.com/issues/1969/02/27/; Arendt, 'Thoughts on Politics', *supra* note 59; Arendt, 'On Violence', in H. Arendt, *Crises of the Republic* (1970) 103; see also Arendt, *supra* note 29.

humanism into 20th-century articulations of human rights. From her experience of exile, Arendt repeatedly asks for a new category for protection that avoids the ‘fateful misunderstanding, suggested by the course of the French Revolution, that the proclamation of human rights or the guarantee of civil rights could possibly become the aim or content of revolution’.⁷⁰ Her sensitivity to the liberal legacy of the French Revolution did not belong to the generation of 1968. Arendt’s response to the *soixante-huitard* makes three key points that emerge from her personal experience of international history and end in a claim to international law.

First, the student rebel was not a revolutionary. Arendt observed *Mai 1968* to be ‘a textbook case of a revolutionary situation which did not develop into a revolution because there was nobody, least of all the students, who was prepared to seize power and the responsibility that goes with it’.⁷¹ Revolution failed because the student rebellion ended in compromise, not the revolutionary founding of a new body politic. Arendt confirmed her disappointment in a letter to her former teacher, Karl Jaspers, in June 1968: ‘I could say a lot about politics. It seems to me that children in the next century will learn about the year 1968 the way we learned about the year 1848.’⁷² Others draw a similar conclusion, though the difference that particularizes Arendt’s position is her idea of humanism.⁷³ Humanizing the world required, consistent with her vision of political freedom, the creation of a stable public space for political action.⁷⁴ The fleeting character of *Mai 1968* meant that any sign of civic ‘power’ that arose from public action was not properly revolutionary because no promise or covenant followed to articulate freedom and sustain it for the future. Reform robbed the students of the turning that is necessary to complete revolution as a full circle or beginning, which, in turn, redefines the political as a space of freedom or democratic encounter (the sign of human status) and formalizes its new character through legal guarantees.⁷⁵

Second, Arendt dismissed any link between the *soixante-huitard* and the outspoken humanism championed by some French intellectuals in 1968, but neither did she disassociate the students with humanism per se or identify them with structuralism.⁷⁶ Arendt’s primary target was Jean-Paul Sartre who incited the students to violence on humanist grounds in the vein of the tradition set by Marx. Arendt did not disagree that the liberal idea needed reworking but, rather, complained that Sartre contradicted ‘the very basis of all leftist humanism’ when he insisted ‘that “irrepressible violence

⁷⁰ Arendt, *supra* note 29, at 140.

⁷¹ Arendt, ‘Special Supplement’, *supra* note 69, at 12; see also Arendt, *Crises of the Republic*, *supra* note 69, at 113–133, 126–127; Arendt, ‘Thoughts on Politics’, *supra* note 59, at 206–207.

⁷² L. Kohler and H. Saner (eds), *Hannah Arendt-Karl Jaspers Correspondence 1926–1969* (1992), at 681. Other commentators also notice the parallel with the 19th-century revolts that almost brought down the Habsburg monarchy in central Europe and famously gave Marx a context for developing his theory of revolution. See, e.g., Shannon, *supra* note 6.

⁷³ Shannon, *supra* note 6.

⁷⁴ Arendt, ‘Thoughts on Politics’, *supra* note 59; Arendt, *supra* note 29, at 166–167, 171; Arendt, ‘Special Supplement’, *supra* note 69, at 206.

⁷⁵ Arendt, *supra* note 29, at 166–167.

⁷⁶ The significance of the *soixante-huitard* for either humanists or other intellectual movements remains equivocal even for those intellectuals who claimed the student rebel for their cause. See, e.g., L. Ferry and A. Renaut, *French Philosophy of the Sixties: An Essay on Antihumanism* (1990).

... is man creating himself," that it is "mad fury" through which "the wretched of the earth" can "become men".⁷⁷ The polemical spin on 'the idea of man creating himself' rearticulated the Marxian maxim but forgot its author explained subjectivity as the metabolism of the proletariat's labour with nature and, importantly, exaggerated Franz Fanon's affirmation of violence. In any case, the students did not listen. *Mai 1968* included images of streets lined with makeshift barricades and scattered cobblestones, but any violence was episodic and largely ineffectual. The remarkable achievement of *Mai 1968* was not revolution but that 'the relatively harmless, essentially non-violent French students' rebellion was sufficient to reveal the vulnerability of the whole political system'.⁷⁸ Some liberal humanists, including the Sorbonne professor Raymond Aron, found the student movement enticing in its moment but later dismissed it as a 'psychodrama' carelessly staged in the street.⁷⁹ Arendt did not need to disassociate the *soixante-huitard* from French structuralists (Louis Althusser, Pierre Bourdieu, Jacques Derrida, Michel Foucault, Claude Lévi-Strauss and so on) when that group never claimed the students for its cause.

Third, the *soixante-huitard* was a humanist of a kind akin to Arendt's revolutionary ideal because of its 'determination to act, its joy in public action'.⁸⁰ Arendt says:

As I see it, for the first time in a very long while a spontaneous political movement arose which not only did not simply carry on propaganda, but acted, *and, moreover, acted almost exclusively from moral motives*. Together with this moral factor ... another experience new for our time entered the game of politics: It turned out that acting is fun. This generation discovered what the eighteenth century had called 'public happiness,' which means that when man takes part in public life he opens up for himself a dimension of human experience that otherwise remains closed to him and that in some way constitutes a part of complete 'happiness'.⁸¹

One contemporaneous account of *Mai 1968* echoed Arendt's observation:

The most striking feature of those days was the sight of people talking to each other – not only casual exchanges, but long intense conversations between total strangers, clustered at street corners, in cafes, in the Sorbonne of course. There was an explosion of talk, as if people had been saving up what they had to say for years. And what was impressive was the tolerance with which they listened to each other, as if all those endless dialogues were a form of group therapy.⁸²

Public exchange is the joy in being together – of being seen and heard – that Arendt identifies as the 'lost treasure' of the classical revolutionary tradition and as the key to civic freedom. The mood was potentially revolutionary but failed because it did not, like all modern would-be revolutions that preceded and followed *Mai 1968*, find a new,

⁷⁷ Arendt, 'Special Supplement', *supra* note 69, at 3; Arendt, *Crises of the Republic*, *supra* note 69, at 114–115.

⁷⁸ Arendt, 'Special Supplement', *supra* note 69, at 12.

⁷⁹ R. Aron, *The Elusive Revolution* (1969).

⁸⁰ Arendt, 'Special Supplement', *supra* note 69, at 203.

⁸¹ *Ibid.*, at 203.

⁸² P. Seale and M. McConville, *Red Flag/Black Flag: French Revolution* (1968), at 95.

constitutional boundary that could stabilize the momentum for civic joy to keep it in motion.

Arendt's thoughts on where to next led her to look beyond the state for a new modality of organization that raises questions for international law. Her suggestion develops her 1963 observation about the potential of popular councils or organs (for example, local councils, the *Räte*, communes, the Soviets) that initiate modern revolutionary situations. The survival of the local 'organs of action' or the 'revolutionary organs of the people' ensures participatory politics by and for all of the people and will determine, in every case, whether the outcome of a potentially revolutionary situation is successful revolution.⁸³ History did not produce a perfect example.⁸⁴ The prospects for the council system in 1963 were still a matter for the 'perpetual state' and uncertain, though by 1968 Arendt had a clearer hypothesis that included the organizing potential of an international authority. Her intuition arose from the global coincidence of protest that emerged as a worldwide, though differentiated, claim by peoples for 'participatory democracy'. Arendt identifies that slogan to be 'the most significant common denominator of the rebellions in the East and West' and 'derives from the best in the revolutionary tradition – the council system'.⁸⁵

At the end of 1968, Arendt began to reflect on the possibilities for a new form of grassroots activism to transfigure the 'concept' of the state into a federated structure for which 'the final resort should not be *supernational* but *international* ... an *international* authority as the highest control agency'.⁸⁶ She explains not how, but, rather, why, this must be the question: 'I see the possibility of forming a new concept of the state. A council-state of this sort, to which the principle of sovereignty would be wholly alien ... because power would be constituted horizontally and not vertically'.⁸⁷ The question still stands as to how social movements, the spontaneous and disjunctive, though transnational, phenomena characteristic of 1968, might humanize the world through greater coordination at the international level. Arendt's question arises from politics and concerns the legal techniques by which the revolutionary and 'international' might rework together as a system of governance. Her question is also the long-standing quest of international lawyers to shape legal and institutional strategies for freedom in a global cartography still dominated by the wishes of the most powerful sovereign states.

B The Humanizing Ambitions of International Law

International lawyers will notice parallels between Arendt's critique of revolution in 1968 and her uncertainty, expressed in earlier writings, about global law. Her views

⁸³ Arendt, *supra* note 29, at 255, 265.

⁸⁴ Arendt's analysis concludes that even in the American example, the influence of council system declined with the advent of a federated structure organised around the representation (rather than popular participation) of professional politicians. See Arendt, *supra* note 29, at 247–267.

⁸⁵ Arendt, *Crises of the Republic*, *supra* note 69, at 124.

⁸⁶ Arendt, 'Thoughts on Politics', *supra* note 59, at 230–231 (emphasis added).

⁸⁷ Arendt, 'Special Supplement', *supra* note 69, at 233.

about international law and rebellion similarly end in conjecture because neither, in her view, matched its promise to humanize the world. Both phenomena situate late modern French history as the legacy of the failure of 18th-century revolution to unlock a legal guarantee for freedom for the human being. Arendt never announces the connection between her separate critiques of late modern international law and of late modern revolution, though each trace back to her reading of the Rights of Man, its invitation to redefine and narrow the idea of humanity and her search for an alternative.⁸⁸

Arendt begins her analysis of international law in *The Origins of Totalitarianism* (1950) with the problem of statelessness, first in the context of the interwar protections for minorities and, then, as a response to post-war initiatives to revive the French ideal of 'man'. In each case, international law failed to correct the internal check that turns 'man' into 'citizen' and inhibits protection for minorities (the disenfranchised, the illegal migrant, the refugee) by restricting participatory politics to the already entitled. Legal protection was accidental (contingent on fortune or birth) and premised on potential exclusion (of all aliens). The problem was obvious for Europe's interwar stateless persons who arrived in France, as Arendt did, seeking asylum and without legal designation. The Minorities Treaties (which were part of the post-war settlements achieved by the Peace Treaties of 1919) secured minimal protections for citizens but did not solve the precarity of the disenfranchised refugee whose fate at home or abroad depended entirely on the sympathies of the nation-state.⁸⁹ The problem became acute after 1933 when Hitler became the Führer, and Nazi racial policies began to direct German politics. International law did not protect Europe's stateless peoples but revealed 'the discrepancy between the efforts of well-meaning idealists who stubbornly insist on regarding as "inalienable" those human rights, which are enjoyed only by citizens of the most prosperous and civilized countries, and the situation of the rightless themselves.'⁹⁰

Arendt addresses post-war initiatives for an international declaration of human rights in a similarly disparaging tone. She emphasizes the naivety and 'hopeless idealism' of international activists because they repeat the revolutionary dilemma that seeks but never materializes the supposedly universal Rights of Man.⁹¹ Once again, her question to international law refigures her response to the modern history of revolution:

The confusion created by the many recent attempts to frame a new bill of human rights, which have demonstrated that no one seems able to define with any assurance what these general human rights, as distinguished from the rights of citizens, really are. Although everyone seems to agree that the plight of these people consists precisely in their loss of the Rights of Man, no one seems to know which rights they lost when they lost these human rights.⁹²

⁸⁸ Déclaration des droits de l'homme et du citoyen, *supra* note 32.

⁸⁹ Arendt, *supra* note 65, at 268–269, 274–275.

⁹⁰ *Ibid.*, at 279.

⁹¹ *Ibid.*, at 269, 292.

⁹² *Ibid.*, at 293.

The fallacy of universal categories revealed not universal entitlement but, rather, the circularity evident in the ‘right to have rights’ that only exists for citizens. The disorientating logic of the concept is also the confusion of past revolutionaries who did not understand the difference between public freedom and civil liberties and their correlates – public happiness and private welfare.⁹³

Arendt’s readers typically assume her criticisms of liberal humanism are a stumbling block for those wishing to recruit her for the projects of liberal international law.⁹⁴ Even those, like Seyla Benhabib, who notice a revision or evolution in her thinking remain unconvinced about Arendt’s faith in the capacity of international law to address inequalities within the nation-state.⁹⁵ Another response, consistent with Arendt’s musings about the international potential of the council system, interprets her reproach not as a criticism of the liberal category of elemental rights but, rather, as a series of questions or demands directed to the liberal promise. If history contains repeated failures, what might international society do through its laws and organizational initiatives to better serve its commitment to worldwide peace and universal freedom? This is exactly the question Arendt asks in 1969 when she complains about the failures of the student movements and contemplates an international solution. The question reappears in the preface and again in the concluding lines of *The Origins of Totalitarianism* as her famous invitation to another history with a different idea of man and a different, happier conclusion: ‘[H]uman dignity needs a new guarantee which can be found only in a new political principle, in a new law on earth, whose validity this time must comprehend the whole of humanity’ and, ‘[b]eginning ... is the supreme capacity of man; politically, it is identical with man’s freedom’.⁹⁶

Each phrase reflects on how to recover the humanist virtues of the ‘lost revolutionary tradition’ through new modalities of political organization and protection. Arendt’s answer is still skeletal in 1950 though she is certain that refiguring ‘man’ is necessary, that the outcome is ‘political freedom’ and that ‘laws hedge in each new beginning’ because ‘the boundaries of positive laws ... guarantee the pre-existence of a common world’.⁹⁷ The two phrases clarify Arendt’s message for international law in 1968 as a development of her earlier, uncertain prompt to the international community for a solution. The year of rebellion gave Arendt another reason to pause for reflection in her search for another idea of ‘man’ and another humanism.

⁹³ Arendt, ‘Revolution and Public Happiness’, *supra* note 30, at 419.

⁹⁴ There is frequently confusion about whether to align Arendt with liberal or radical traditions because of her critique of Marx and her commitment to republican models of democratic participation yet non-systematic approach to politics. Another view resists aligning Arendt with either tradition but, rather, envisages her as a devotee of radical democratic practice that may be highly idiosyncratic in its contextual variations. This also conforms with Arendt’s openness to socialist and liberal forms of governance where the example produces public freedom and her critique of each modality depending on the details of its contextual manifestation. Arendt, ‘Thoughts on Politics’, *supra* note 59, at 212–213, 220–221.

⁹⁵ E.g., Benhabib, ‘International Law and Human Plurality in the Shadow of Totalitarianism: Hannah Arendt and Raphael Lemkin’, 16(2) *Constellations* (2009) 331.

⁹⁶ Arendt, *supra* note 65, at ix, 479.

⁹⁷ *Ibid.*, at 465.

4 'Ships That Pass in the Night, and Speak Each Other in Passing'⁹⁸

A final coincidence presents a further corner of the puzzle concerning the relationship between international law and revolution in 1968. Its effect urges a progression of Arendt's idea about the international prospects of revolution because it exposes *Mai 1968* as a lost opportunity for humanist collaboration through the UN. The moment presented a critical juncture at which to address the future of 'man' as citizen in both law and politics because the question of universal entitlement was in the streets (as an embodied, collective enactment) and on the agenda of internationalists (as a legal proposal for implementation). Beyond the state, the international community commemorated the 20th jubilee of the 1948 Declaration and sought to advance its humanist vision through numerous initiatives. These included designating 1968 as the first International Year of Human Rights;⁹⁹ the adoption by the UN General Assembly of the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity in November;¹⁰⁰ reflection on the development and codification of a right of peoples to self-determination as a mechanism of friendly relations among nations in December;¹⁰¹ and accession by the first Great Powers to the 1966 International Covenant on Civil and Political Rights and the 1966 International Covenant on Economic, Social and Cultural Rights in September.¹⁰² The Nobel Foundation marked the anniversary of the post-war beginning of human rights by awarding the French jurist and internationalist, René Cassin, the Peace Prize for his contributions as a jurist, internationalist and architect of the 1948 Declaration.¹⁰³ The acme of this sequence, which also memorializes *Mai 1968* as a 'critical moment' and as a lost opportunity for students and internationalists, was the first Conference on Human Rights in Tehran (Tehran Conference).¹⁰⁴ An eighty-year-old Cassin led the French delegation.

The Tehran Conference gathered the international community together to discuss the future of human rights between 22 April and 13 May 1968. The newsreel for

⁹⁸ Longfellow, *Theologians Tale*, IV, at 1, available at www.hwlongfellow.org/poems_poem.php?pid=2074.

⁹⁹ GA Res. 2081(XX), 20 December 1965.

¹⁰⁰ Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity, Doc. A/RES/2391(XXIII), 26 November 1968.

¹⁰¹ GA Res. 2463 (XXIII), 20 December 1968.

¹⁰² International Covenant on Civil and Political Rights 1966, 999 UNTS 171; International Covenant on Economic, Social and Cultural Rights 1966, 993 UNTS 3. For report on signature and reservations to each convention by United Kingdom, see Schwelb, 'The United Kingdom Signs the Covenants on Human Rights', 18(2) *ICLQ* (1969) 457.

¹⁰³ For details, see, e.g., Winter and Prost, 'The Universal Declaration of Human Rights: Origins and Echoes', in A. Prost and J. Winter (eds), *René Cassin and Human Rights: From the Great War to the Universal Declaration* (2013) 221; R. Cassin, 'Nobel Lecture 1968: The Charter of Human Rights', available at www.nobelprize.org/nobel_prizes/peace/laureates/1968/cassin-lecture.html. Cassin also received a UN Human Rights Prize in 1968. R. Burke, *Decolonization and the Evolution of International Human Rights* (2011), at 176, n. 165; G.A. President Announces Winners of First U.N. Human Rights Prizes, UN Doc. GA/3836/HR/209, 2 December 1968.

¹⁰⁴ See references to the Tehran Conference, and the relevant outcomes recorded in the Final Act of the Tehran Conference, *supra* note 1, and the Proclamation of Tehran, *supra* note 1.

the student rebellion records an almost simultaneous sequence that climaxed with skirmishes remembered as the ‘Night of Riot in the Latin Quarter’ on 10 May before spiralling in a statewide strike and mass demonstrations by workers and students in Paris on 13 May. The embodied, youthful spectacle of protest crossed paths with Tehran thematically and temporally, but the Tehran Conference record remains deaf (though arguably gestures) to the unfolding revolutionary situations in participating states. The French prime minister, Georges Pompidou, visited Tehran in the first week of May to discuss ‘international issues’ with Iranian rulers and to address the Tehran Conference on behalf of France. He made no reference to the turmoil unfolding at home.¹⁰⁵ Rather, he noted the special contributions of France in the lineage of universal human rights. He spoke as a liberal humanist, an internationalist and as a devotee of the nation-state:

Although France has no monopoly of human rights, its philosophical, cultural and political traditions have helped to enrich the current which has finally culminated in the proclamation of these rights in a universal instrument. It is only natural, and in keeping with a long-standing tradition, starting with the Declaration of the Rights of Man in 1789, that France should lend its assistance to the activities of the United Nations.¹⁰⁶

Cassin urged the Tehran Conference delegates to reject a distinctive, post-colonial category of rights and affirm the French ideal of universal, individual entitlement for every person.¹⁰⁷ Tehran, however, did not satisfy expectations, and its shortcomings generally marginalize the gathering in histories of human rights.¹⁰⁸

The still traditional assessment of the Tehran Conference is that it failed (for some, catastrophically) to match its brief to reform the UN human rights system through more robust, efficient or politically neutral enforcement mechanisms or to substantiate universal entitlements for post-colonial peoples.¹⁰⁹ The meeting produced a general proclamation restating the 1948 Declaration, a series of resolutions on specific issues and a patchy record of proceedings, but no progress on particularizing protections for the universal rights of ‘man’.¹¹⁰ For the international lawyer, the proclamation and subsequent resolution noting the same were not law.¹¹¹ The muted outcome reflected

¹⁰⁵ D. Dishon (ed.), *Middle East Record 1968* (1973), at 99; see also G. Pompidou, ‘Message from Prime Minister of the French Republic’, reprinted in the Final Act of the Tehran Conference, *supra* note 1, at 42.

¹⁰⁶ Pompidou, *supra* note 105, at 42.

¹⁰⁷ France, 3rd plenary meeting, Doc. A/Conf. 32/SR. 3, 26 April 1968.

¹⁰⁸ Amrith and Sluga, ‘New Histories of the United Nations’, 19(3) *Journal of World History* (2008) 251, at 256–257.

¹⁰⁹ See, e.g., Moyn, *The Last Utopia*, *supra* note 13, at 126–127, and brief reference to the disjunction between the UN’s interest in human rights at Tehran and upheavals of 1968 (at 3); Burke, ‘From Individual Rights to National Development: The First U.N. International Conference on Human Rights, Tehran, 1968’, 19(3) *Journal of World History* (2008) 275, at 276, 296; Thompson, ‘Tehran 1968 and Reform of the UN Human Rights System’, 14(1) *Journal of Human Rights* (2015) 84, at 86–88.

¹¹⁰ See Final Act of Tehran Conference, *supra* note 1; Proclamation of Tehran, *supra* note 1.

¹¹¹ For the endorsement by the UN General Assembly of the Proclamation of Tehran, *supra* note 1, see GA Res. 2442(XXIII), 19 December 1968, cl. 5. The highest status of a resolution without a formal convention is soft law (if that category has purchase) or as a precursor to customary international law (if the practice of states pursue the relevant objectives).

the geopolitical situation that was transforming the priorities of global power away from imperial states or established powers to diversify the geography of influence. Cold war politics and the new status of post-colonial and Third World states within the UN meant focusing on collective rights rather than reworking and elaborating how the liberal ideal could extend beyond the revolutionary limitations of 'man' and 'state'. Recent histories of the Tehran Conference attempt to redeem its significance by focusing on the openness in the late 1960s, not evident in the immediate post-war era of international administration and mandated territories, for developing strategies to enable minority rights, development and self-determination.¹¹² For these historians, the progression towards greater international generosity for the interests of post-colonial peoples was the striking achievement or characteristic of the Tehran Conference rather than, as for other commentators, its affirmation of an enduring reluctance to share the humanist ideals of the liberal state with the world.

Another assessment is possible by noticing the coincidence between what happened in Tehran for human rights and the protests that climaxed in Paris on 13 May. This view emphasizes another angle of the sequence beyond failure or evolution by noting that it was a missed opportunity to coalesce two related, but different, humanist projects. The Tehran Conference did not capitalize on the rare 'public spirit' (to borrow Arendt's phrase) then stirring in the urban protests 'at home'. Statesmen from the post-industrial states hesitated to mix national and international agendas to avoid aggravating the claims of their citizens for civil rights.¹¹³ The missed chance arises not merely because the international delegates ignored the contemporaneous phenomenon of protest at home but also because the achievements at Tehran, like the student rebellions, were underwhelming and because everyone present knew that substantive human rights reform required nurturing and co-opting sympathy for human rights globally. Speakers at the Tehran Conference never mention the student rebellions as a matter for debate and resolution but did address, directly, the question of harnessing the enthusiasm of the world's youth for human rights.

The gesture to the student rebel as a potential participant in, or supporter of, the international project is clear from the commitments made at Tehran. Clause 17 of the Tehran Proclamation identifies young people, which necessarily includes the student activists who were the authors of the 'problem' of urban protest in post-industrial states, as potential and much-needed international actors: 'The aspirations of the younger generation for a better world in which human rights and fundamental freedoms are fully implemented, must be given the highest encouragement. It is imperative that youth participate in shaping the future of mankind.'¹¹⁴ It is also certain that

¹¹² Roland Burke leads this camp with a new history of the Tehran Conference that assesses its tone as 'emblematic of fundamental changes' that shifted the world's attention away from the 1948 priority for personal freedoms to collective and national rights and concern for development. Burke, *supra* note 109, at 276–277, 294.

¹¹³ For details about communiques between US officials who were mindful of the effect of the Tehran Conference on the race question in the USA, see *ibid.*, at 289–290.

¹¹⁴ Proclamation of Tehran, *supra* note 1, at 5.

the ‘imperative’ to include the young in international governance was contingent on the ongoing capacity of the international community to determine the meaning of human rights. In addition to the Tehran Proclamation, the Tehran Conference adopted a series of resolutions including an important commitment to educating youth. The Tehran Conference parties said education was necessary to ensure ‘changes in ways of thinking, the outlook of peoples and the stand they take towards the rights of man’ and because it is imperative ‘to implant in the conscious of youth lofty ideals’ and harness ‘the enthusiasm and creative spirit of youth’ in these ends.¹¹⁵ The UN General Assembly endorsed the resolution in December 1968.¹¹⁶

For Arendt’s readers, the language of the resolution is also significant because it suggests that the participation of the young (or, for Arendt, ‘action’) is collaborative (involving youth organizations, states and UN agencies, Resolution 5) and that participating ‘constitutes a primary condition for its happiness’.¹¹⁷ This is exactly the reason why Arendt regarded student activism in 1968 as promising though not revolutionary and why the global phenomenon of protest prompted her to look further afield for some kind of international collaboration overseen by an international authority. Then, the students enjoyed glimpses of ‘public happiness’ through being seen and heard together but did not find a mechanism, in law, to sustain their appetite for freedom. The architects of the Tehran Proclamation knew that the seed of progress is the political fulfilment of citizens within the nation-state and that international coordination was necessary to give it form. The UN General Assembly similarly understood, without developing, that international organizations ‘could provide useful channels through which the deeply felt concerns of youth could be better understood ... and constructive confrontations between spokesmen of the various generations could be harmoniously conducted’.¹¹⁸ That the key to ‘public happiness’ could be international in its conception or execution was not entirely new for Arendt in 1968.

Arendt understood that the public arena of action survives only insofar as it finds a legal frame:

Freedom ... has always been spatially limited. ... Treaties and international guarantees provide an extension of this territorially bound freedom for citizens outside of their own country, but even under these modern conditions the elementary coincidence of freedom and a limited space remains manifest ... we could also call spaces of appearances – with the political realm itself, we shall be inclined to think of them as islands in a sea or as oases in a desert.¹¹⁹

Whether Tehran failed or remains an important step in the history of human rights is unclear. What is more certain is that *Mai 1968* was a fleeting ‘island’ or ‘oasis’ in time shared by the delegates who met at Tehran. That internationalists noticed this coalescence and hesitated to exploit it refigures the significance of the Tehran Conference as a lost opportunity to coordinate the transnational enthusiasm for change. The Great

¹¹⁵ *Ibid.*, at 15.

¹¹⁶ GA Res. 2447 (XXIII), 19 December 1968.

¹¹⁷ *Ibid.*; Final Act of the Tehran Conference, *supra* note 1, at 16.

¹¹⁸ GA Res. 2447 (XXIII), *supra* note 116.

¹¹⁹ Arendt, *supra* note 29, at 267.

Powers misconceived urban protest as a local problem or distraction to quieten rather than as a resource for their humanist ambitions abroad.

5 The Magic Epithet ‘We the People’

The normative standoff between international law and revolution pares back to the presupposition that state sovereignty is the foundation of world order, not individual or human rights. There was no digression from the rule in 1968 when international legal practice negotiated the fragility and dangers of declarations, diplomacy and Cold War détente in a fast-moving conversation that shut out the *soixante-huitard*. Revolutionaries did the same by identifying themselves as antagonists of the politicians and bureaucrats who spoke on behalf of the state in international affairs. ‘We the people’ became a legitimating epithet for both internationalists and protesters, uttered in the performative gestures of each, to exclude the international emissary who might reinforce or foil revolution.

The difficulty for internationalists was its equal significance as a mythical epithet for the humanist origins of their cause. Exhumed from the bones of the 1789 French Declaration of Man and Citizen, ‘we the people’ animated in transnational scenes of protest and tethered the imaginary of urban protest to a pivotal ethos of the international legal order and its abstract human subject.¹²⁰ The humanist myth underpinning both civic and international logic concentrated in the figure of the *soixante-huitard* at the place where the heartbeat of modern human rights began. It is a critical subjectivity for internationalists not merely because of popular nostalgia for *Mai 1968* as a generational snapshot but also because the *soixante-huitard*’s humanist echo strung disaggregated situations and actors together in a rare, peaking moment when the norm almost translated into fact and each side was paying attention. Demands for a more humane world pressed for answers in multiple locations but receded when ‘the people’ failed to make a claim on the internationalist as internationalist and internationalists returned from abroad to focus on the business of governing. That internationalists turned away from the visceral expression of their humanist norm on account of ‘we the people’ recasts the historical sequence as a contradiction. The magic epithet becomes a chameleon phrase when used by internationalists to respect the wishes of peoples – as a humanist cause – and to serve the sovereign authority of states. The nonchalance of these guardians of the international rule of law implicates them, as agents of humanism in its worldwide projection, in the transnational disappointments of revolution.

The question that remains is why internationalists and revolutionaries longed for a variation of the same thing in 1968 but missed the opportunity for collaborative engagement that might achieve it. One response returns to the subject of the epithet as the knot of the internationalist’s twin allegiance: to humanism and to the state. The *soixante-huitard* counts as ‘the people’ insofar as it expressed popular dissatisfaction

¹²⁰ Déclaration des droits de l’homme et du citoyen, *supra* note 32.

with its situation to trigger new momentum in France for radical political change.¹²¹ Nevertheless, its designation as the relevant protagonist is superficial even within the brief temporal frame of its celebrity. This is because the epithet particularizes the location of political authority within a state that translates as authority to speak for the state. The *soixante-huitard* could not be the definitive spokesperson for the cause of the people because it never spoke for France. The French sociologist, Pierre Bourdieu, clarifies this:

The spokesperson is the substitute of the group which fully exists only through this delegation and which acts and speaks through him. He is the group made man, personified. As canonists said: status, the position, is *magistratus*, the magistrate who holds it, or, as Louis XIV proclaimed, '*L'Etat, c'est moi*;' or again, in Robespierre's words, 'I am the People'.¹²²

When the internationalist utilizes the epithet 'we the people' to abstain from influencing revolution it repeats its commitment to a diluted version of humanism that serves whoever speaks for the people and personifies the state. The *soixante-huitard* was a minor candidate vying to speak for its part in the social and political life of France who meets the internationalist not as a conspirator or guide but, rather, as another humanist, albeit with different ambitions and strategies, equally frustrated in the pursuit of its cause.

Two propositions follow from noticing dissidence and competition between the two projects rather than, as legal theorists often suggest, disinterest and separation. First, the frustration of both humanisms does not mean collapsing the life of the revolutionary into the ambitions of the internationalists in a manner that turns the internationalist into a saviour or champion of the dissidents of states. To solve this difference would corrupt the integrity of political practice in both the international and domestic arena by, at the very least, writing the outcome to each revolutionary situation before the contest for power concludes. Second, continuing along the same dissatisfying thread from upheaval to disappointed revolution, on repeat, denies the simultaneity of legal and political visions to break away from old patterns and the possibilities for change that might follow from a more deliberate, interdisciplinary conversation. Arendt's sketch of a newly networked political system, distinct and vibrant in its local iterations and overseen by an ultimate international authority, beckons to a new kind of law and organization that designates the revolutionary and the internationalist as partners and agents who may speak for the state as much as for the lives within it. The discovery of paired projects encourages attention to differently constituted historical

¹²¹ Pierre Bourdieu notices that the 'magic epithet', 'popular', designates the 'people' and legitimates its cause. As a result, the use of the word 'popular' is a verifying technique to legitimize the cause of the 'people' as a good cause because 'popular' means, in its ordinary dictionary meaning, 'what belongs to the people, emanates from the people ... what is created and used by the people ... who is recruited among the people ... what pleases the people'. See, e.g., Bourdieu, 'Social Space and Symbolic Power', 7(1) *Sociological Theory* (1989) 14, at 24 (translated from a lecture at the University of California San Diego on 24 March 1986).

¹²² Bourdieu, 'Social Space and Symbolic Power', 7(1) *Sociological Theory* (1989) 14 (translated from a lecture at University of California San Diego on 24 March 1986).

realities that may, for revolutionaries and internationalists, respond to the repeated frustrations of humanism. Bourdieu elucidates how the deceptive designations of state that turn the epithet from serving peoples to serving sovereigns can unlock to make room for the joint desires of revolutionaries and internationalists when each notices its project in the projects of the other. The opportunity for a more humane world endures because he knew that '[t]o change the world, one has to change the ways of world-making, that is, the vision of the world and the practical operations by which groups are produced and reproduced'.¹²³ This thought releases 'we the people' from certain designations and opens revolutionaries and international lawyers to the humanist tasks that lie between them.

¹²³ *Ibid.*, at 23.